

Local Union No. 274, Hotel Employees and Restaurant Employees International Union, AFL-CIO and Stadium Hotel Partners, Inc., General Partner, and 35 Limited Partners, d/b/a Stadium Hotel Partners, L.P. d/b/a Holiday Inn-Philadelphia Stadium. Cases 4-CP-441, 4-CP-442, and 4-CB-6960

August 31, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On February 9, 1994, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel filed exceptions, and the Respondent filed a brief in opposition to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions¹ and briefs and has decided to affirm the judge's rulings,² findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local Union No. 274, Hotel Employees and Restaurant Employees International Union, AFL-CIO, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent has filed a request for oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² The General Counsel has excepted to the judge's granting of the Respondent's motion to strike the complaint allegations that certain unions acted as agents of the Respondent. Although we agree with the judge's granting of the motion, we do not adopt the judge's characterization of those allegations as "mere surplusage" and a "waste" of time at the hearing.

William Slack, Esq. and *Sheila Mayberry, Esq.*, for the General Counsel.

Bernard N. Katz, Esq. and *Adam H. Feinstein, Esq.* (*Meranze and Katz*), both of Philadelphia, Pennsylvania, for Respondent Union.

Philip Keating, Esq. (*David & Hagner, P.C.*; *Jay P. Krupin, Esq.*, on the brief), of Washington, D.C., for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The consolidated complaint alleges that Respondent, Local Union No. 274, Hotel Employees and Restaurant Employees International Union, AFL-CIO (the Union), engaged in recognition picketing for more than 30 days in violation of Section 8(b)(7)(C) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. The Union denied that it violated the Act in any manner, insisting that it picketed at first solely to protest the unfair labor practices of Charging Party Stadium Hotel Partners, L.P. (Stadium) and, later, solely to publicize Stadium's payment of substandard wages and benefits.¹

Jurisdiction is conceded. Stadium, a limited partnership consisting of Stadium Hotel Partners, Inc., general partner, and 35 limited partners doing business as Holiday Inn-Philadelphia Stadium, has its principal place of business in Philadelphia, Pennsylvania, where it is engaged in the operation of a hotel and restaurant known as the Holiday Inn-Philadelphia Stadium (Hotel). During the year ending July 28, 1993, Stadium derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. I conclude, as the Union admits, that Stadium is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Until 1991, Colonial Philadelphia Limited Partnership (Colonial) operated the Hotel, which was then known as the Airport Hilton Inn. The Union represented a unit of service employees at the Hotel since approximately 1974, its most recent collective-bargaining agreement with Colonial being effective on October 1, 1990, and expiring by its terms on September 30, 1995. Among its provisions, the agreement provides that it shall be applicable to any successor or assign of Colonial. In 1991, Security Pacific Credit Corporation (Security) acquired legal title to the Hotel and contracted with Richfield Hotel Management, Inc. (Richfield) to manage it. Security and Richfield adopted the collective-bargaining agreement and recognized the Union as the representative of the employees covered by the agreement. After taking control, Security changed the name of the Hotel to the Philadelphia Court Hotel.

In mid-December 1992, Stadium, in conjunction with GF Management Co. (GF), made an offer to purchase the Hotel from Security. On January 11, 1993,² Security sent Stadium a proposed agreement which required the assumption of the collective-bargaining agreement. GF, which was to become the management company of the Hotel, objected that the as-

¹ The relevant docket entries are as follows: The unfair labor practice charges in Cases 4-CP-441 and 4-CP-442 were filed by Stadium on May 27 and July 13, 1993, respectively, and the complaint issued on July 28. Stadium filed its charge in Case 4-CB-6960 on July 13, 1993, and the complaint issued thereon on August 31 and was amended on November 8. The cases were consolidated by order dated October 19; and the hearing was held in Philadelphia, Pennsylvania, on November 30 and December 1. On the first day of the hearing, the parties settled the complaint in Case 4-CB-6960.

² All dates hereafter mentioned refer to the year 1993, unless otherwise stated.

sumption was “overly restrictive and create[d] serious obstacles to [the] ability [of the buyer] to make operational changes at the Hotel.” It advised that it had no intention to hire all the seller’s personnel. As a result, there is no such provision in the agreement of sale, which was entered into on January 22. Rather, the agreement provided, in part, that: “Buyer and Seller hereby acknowledge that all individuals employed by Seller shall be deemed terminated as of the Closing Date and that Buyer is a new employer and as such has completed [sic] discretion over hiring decisions in accordance with applicable federal, state and local law.” Further, the parties agreed: “[T]he compensation of employees working as of the Closing Date will be paid by Seller for all shifts commencing prior to the Closing Date and shall be paid by the Buyer for all shifts commencing after the Closing Date.”

The title closing was scheduled for February 25, and it began that morning, but for a variety of reasons (problems with the transfers of vehicles and liquor license, for example) did not conclude until somewhere between 11 p.m. and 2 a.m. that night. Because of the delay, the counsel for Stadium wrote to the counsel for Security confirming their agreement that: “[M]anagement of the Hotel will transfer tomorrow at 3:00 p.m. Until such time, Richfield Management Company will remain responsible for the management of the Hotel and its employees.” By shortly before 3 p.m. on February 26, neither Security nor Richfield had informed the employees that their employment was terminated. But, at about that time, GF Regional Manager Roger Murphy held a meeting at the Hotel with those individuals who had been employed there by Security and Richfield and told them of the sale and the need to make major changes. He announced that: “[W]e are temporarily closing the hotel starting today. We expect to be reopening on Friday, March 5th.” He further stated:

We understand that you probably have questions about jobs and we look forward to meeting all of you. As I explained, we are a new employer and have no information about any of you. In fact, we do not have employee files or other documents from your employer. For this reason, we ask that if you are interested in working with us you come to the hotel ballroom on Monday or Tuesday between 10:00 a.m. and 7:00 p.m. in order to complete an application for employment. We will be conducting interviews at those times.

Unfortunately, we are not in a position to tell you that everyone will be hired. Because of the changes that are so important for this hotel, we may be eliminating or modifying some classifications, or adjusting service or performance levels. We can tell you that we are committed to employing the best qualified individuals for all positions. We hope to see you next week.

Stadium curtailed operations at the Hotel between February 26 and March 5. It told its guests that it could not provide them with services and asked them to move to other facilities. Many did, however, fewer than a dozen guests who had been present in the Hotel on February 26 remained during this period, although they were not serviced by any employees and had to clean their own rooms. In addition, three functions (a cocktail reception, a breakfast and seminar, and

a bridal shower) which had been scheduled prior to February 26 went ahead as scheduled on February 26, 27, and 28, serviced solely by GF management personnel. Stadium (or GF) was paid for these events, although they were contracted prior to Stadium’s purchase of the Hotel. (All receipts from the operation of the Hotel after the closing of title were paid to and retained by Stadium (or GF) and not reimbursed to Richfield.) Normal operations of the Hotel resumed on March 5 with only 15 employees; and after that date, the complement of employees increased to about 70 by June, when Stadium changed the name of the Hotel to its current name.

On February 26, Stadium General Partner Kenneth Kochenour wrote to union secretary-treasurer, Patrick Coughlan, notifying him of Stadium’s purchase, its closing of the Hotel, and its offer to accept applications for employment on March 1 and 2. In addition, he wrote that Stadium did not wish to adopt any collective-bargaining agreement. The Union was displeased. First, representatives of Stadium and the Union met on March 1. Union Attorney Bernard Katz started the meeting by asking Kochenour if he was going to recognize the Union or if he wanted a war. Coughlan stated that Stadium had to recognize the Union, and Katz added that it was in Stadium’s best interest to do so. The Union’s desire to be recognized is also evidenced in Union Attorney Michael Katz’ letter of March 4 to Stadium’s attorney:

As we indicated at our meeting held on March 1, 1993, it is the intent of the Union to negotiate with your client concerning the continued employment of bargaining unit employees, terms and conditions of employment including any desired modifications to the existing collective bargaining agreement, and other matters relating to the transition of ownership to your clients as it pertains to labor relations. It is also our desire to negotiate with your client concerning the decision to terminate operations during the week of March 1 and concerning the effects of such termination as well as your client’s termination of the existing employees.

It is my understanding that your client declines to recognize Local 274 and to negotiate with it concerning any of the above-mentioned issues.

Stadium’s rejection prompted the Union to file an unfair labor practice charge in Case 4-CA-21488 on March 3, alleging violations of Section 8(a)(1), (3), and (5) of the Act. The Union complained that Stadium terminated the employees, unilaterally abrogated the collective-bargaining agreement without bargaining with the Union, and failed and refused “to recognize [the Union] as collective-bargaining agent for bargaining unit employees, . . . and to bargain with the Union concerning the decision to terminate the operation of the Hotel for a period of time.” On March 4 or 5, in conjunction with the filing of the charge, the Union commenced picketing; because, as Coughlan testified, the Union had every reason that Stadium was not going to rehire all of the employees whom the Union represented and that Stadium was not going to deal with the Union. The Union continued to picket on each day from then, except for Easter Sunday, April 11 through July 3, when, as will be seen, it stopped for 1 day. Most of the pickets carried signs stating, “Holiday

Inn—unfair.” At no time did the Union file a petition under Section 9(c) of Act seeking an election among Stadium’s employees and certification by the Board that it was the representative of such employees.

Section 8(b)(7)(C) prohibits a labor organization from picketing any employer where an object thereof is forcing or requiring it to recognize or bargain with the labor organization as the representative of its employees, or forcing or requiring the employees of the employer to accept or select such labor organization as their collective-bargaining representative, when the labor organization is not currently certified as the representative of such employees and when the picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed 30 days of commencement of such picketing. Recognition or bargaining need not be the sole object for a violation to occur. *Service Employees Local 73 v. NLRB*, 578 F.2d 361, 373 (D.C. Cir. 1978); *NLRB v. District Council of Carpenters of Suffolk County*, 387 F.2d 170, 173 (2d Cir. 1967); *Stage Employees IATSE Local 15 (Albatross Publications)*, 275 NLRB 744 (1985). Coughlan’s admission that the picketing resulted from Stadium’s refusal “to deal with the Union” is, by itself, sufficient to prove an illegal object. His admission is consistent with the very relief that the Union’s March 1 meeting and unfair labor practice charge sought and was rejected—recognition of the Union and adoption of its collective-bargaining agreement. *Automotive Employees Local 618 (S & R Auto Parts)*, 193 NLRB 714 fn. 1 (1971). His admission is also consistent with the fact that the picketing followed immediately on Stadium’s rejection of its demands for relief, a certain indication that the Union was seeking on the picket line what it could not obtain at the meeting. *Building 7 Construction Trades Council (Fisher Construction)*, 149 NLRB 1628, 1643–1644 (1964); *Retail Clerks Local 1557 (Giant Foods)*, 217 NLRB 4, 9–10 (1975).

Its conduct on the picket line supports this finding. Shortly after the picketing began and on at least another occasion, Coughlan told a police officer that the Hotel “was a union hotel, and they threw all the union employees out. And that they [the Union] would be out there for as long as it took for this to remain a union hotel.” Coughlan later explained that: “Eighty people would be hired back or nothing.” The Union’s picket signs made the very same complaint, that Stadium was “unfair” by employing scab labor, instead of the Union-represented employees Stadium declined to continue to employ. On May 19, a rally was conducted at the Hotel, organized by the Philadelphia AFL–CIO Central Labor Council (Council), but effectively led by Coughlan. To obtain his members’ attendance at the rally, Coughlan wrote that it was being held to support the Union’s members who had been forced to strike by the new management of the Hotel. The individuals participating at the rally chanted, “Put them back to work Ron [a reference to Ron Jaworski, another of the general partners of Stadium],” “Union yes; scabs no,”³ and “You ain’t Union, you ain’t shit.” There

were a number of speakers, including Coughlan, union president, and business manager, Robert Baker, and Joseph Rauscher, then president of Bakery Workers and Confectionery Workers Local 6 and later president of the Council, who stated, “Let the message go out from here today, if he don’t sit down and negotiate with this Union, this hotel will not operate.” Coughlan’s participation in and presence at the rally, his introduction of the speakers, and his failure to disassociate the Union from the remarks of all the speakers, constitute an adoption and ratification of the remarks, which are wholly consistent with the object of the Union; and the Union is responsible for them. *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82, 83 (1988).

On May 25, Union Business Agent Thurston Hyman stated that the union pickets would block all entrances until the Union received a contract from Stadium. On June 16, Coughlan spoke to prospective patrons of the Hotel over a loudspeaker, stating: “Please do not patronize this scab hotel.” The next evening, June 17, there was a night baseball game being played at Veterans Stadium, which is located across from the Hotel. During sporting events, the Hotel rents space in its parking lot to individuals attending the sporting events. The Union picketed the Hotel during the period immediately preceding the start of the game, and one of the union pickets used a loudspeaker to communicate with individuals attending the game: “Scab hotel. \$3 parking across the street. \$4 at the scab hotel. All scabs working in there.”

The Union’s conduct at the picket line dramatically evidences its demand for recognition. The Union also continued to prosecute its unfair labor practice charge. On May 18, the Regional Director for Region 4 refused to issue a complaint, finding that Stadium was not a joint employer with Security and so was not involved in the termination of the employees and was not a party to its predecessor’s collective-bargaining agreement. Thus, he concluded, contrary to the Union’s position, that Stadium “had no obligation to recognize or bargain with the Union as the representative of its employees, or to abide by the Union’s collective bargaining agreement.” The Union appealed the refusal, and the General Counsel denied the appeal on June 22. The Union filed a motion for reconsideration which was denied on July 30. Thereafter, on October 12, the Union filed a new charge (Case 4–CA–22157),⁴ alleging the same claim of successorship as had been contained in its earlier charge, but based on claimed newly discovered evidence. On November 23, the Regional Director dismissed the new charge and refused to issue a complaint.

That the Union was attempting to obtain recognition is demonstrated by other legal actions it took. It filed on March 5 a demand for arbitration with the American Arbitration Association (AAA) charging that Stadium, Security, and Richfield had violated the recognition and successors clauses of the collective-bargaining agreement and seeking, inter alia, the reinstatement of all bargaining unit employees. Apparently, Stadium took exception to the claim that it was a party to the agreement.⁵ In reply, on April 2, counsel for the Union wrote to the AAA:

³ “Scab” is defined in *The American Heritage Dictionary*, Third Edition (1992), as a “worker who refuses membership in a labor organization” and a “strikebreaker.” The use of the word does not necessarily imply a recognition object in all instances. Here, however, the Union’s object was the replacement of “scabs” with its members in order to regain recognition by Stadium.

⁴ The Union filed this as an amended charge. There was, however, nothing to amend because the original charge had already been dismissed. The Regional Director treated the charge as a new one.

⁵ The letter was not introduced in evidence.

It is the position of Local 274 that Stadium Hotel Partners, L.P. functioned as a joint employer with Richfield Hotel Management during times both relevant and material to the disputed issue, and engaged in certain conduct creating liability as an employer under the collective bargaining agreement. Having functioned as a joint employer during times material to this dispute, Stadium Hotel Partners, L.P. cannot now attempt to avoid obligations created under the collective bargaining agreement on the claim that it is not signatory to that agreement. In the alternative, Stadium Hotel Partners, L.P. acted in a manner making it a successor to Richfield Hotel Management under the terms of the collective bargaining agreement.

Again, on April 16, apparently under questioning from the AAA about the reason that Stadium should be retained as a party to the arbitration proceeding,⁶ union counsel wrote:

On February 26, 1993, Stadium Hotel Partners, L.P. executed an agreement to purchase the Hotel from Security Pacific and Richfield. For at least thirty (30) days prior to that date, Stadium Hotel Partners, L.P. jointly managed and operated the Hotel with Richfield and was actively involved with the day to day operation of the facility. At all times during this period, Stadium Hotel Partners, L.P. in conjunction with Richfield and Security Pacific, acted consistent with the terms of the collective bargaining agreement and functioned as a joint employer. As a result, Stadium Hotel Partners, L.P. became party to and bound by the existing collective bargaining agreement. It is only at this juncture, subsequent to the agreement of sale, that Stadium Hotel Partners, L.P. has taken a position that it has no obligation to continue to adhere to the terms of the agreement.

It is well established that an employer by its conduct can adopt or otherwise become party to an existing collective bargaining agreement. It is no defense thereafter for the employer to contend it has no obligation on the basis that it never technically executed a new copy of the agreement or that its name does not appear on the face thereof. The American Arbitration Association, as an administrative tribunal, does not have the jurisdiction to determine the issues which are now being raised. Such matters fall within the purview of the Arbitrator or the courts. With all due regard to the AAA, I submit that this matter should simply proceed with normal case administration unless and until any of the employer entities obtains an adjudication from a tribunal of appropriate jurisdiction to the contrary.

The demand for arbitration was still pending at the time of this unfair labor practice hearing, and the arbitration hearing was scheduled to be held on January 11, 1994. If successful, the Union will force Stadium to recognize it because Stadium will be bound by the collective-bargaining agreement which so requires. The Union seeks to avoid the obvious by claiming essentially that no self-respecting arbitrator would grant the relief that the Union sought, that the Union was merely "inviting" Stadium to play a part in the arbitration, and that the Union had no intention at the arbitration

of asking for the award of damages against Stadium. However, the arbitration demand and the letters which explained the Union's position are utterly contrary to this new claim, which is novel and unsupported and a feeble effort aimed at avoiding the clear consequences of the Union's actions.

The Union contends that its picketing was intended to protest the Stadium's unfair labor practice—mass termination of the bargaining unit employees it then employed, as the successor to Security or Richfield. It reaches the conclusion that Stadium was a "successor" on the basis of the following argument: Under the agreement of sale, the parties agreed that title would pass at the closing. Title passed late on February 25, from 11 p.m. to 2 a.m.; and so Stadium became the owner of the Hotel at that time. It, therefore, became the employer of the Hotel's employees, whom it employed from then until 3 p.m. on February 26, about 13–16 hours. The letter extending the time of Richfield to assume the management of the Hotel was not legally effective because any amendment of the agreement of sale had to be in writing, signed by the "party to be bound"; and it was not signed by Security. Therefore, the Union contends that Stadium could not have delayed its employment of the employees.

However, this conclusion is inconsistent with what the parties were attempting to accomplish. The agreement makes clear that the employees were to be deemed discharged before the buyer bought the business. The buyer was not to assume the Union's collective-bargaining agreement. Counsel was certainly aware that, if Stadium bought the Hotel with the employees, it might be found to be the successor because then there might be continuity in the work force, which exists when a majority of the successor's employees were those of the predecessor. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 46 (1987). Consistent with the parties' understanding, when the delay in the closing prevented the buyer's immediate takeover of the Hotel (it could hardly be expected that there would be a changing of management guard at 2 a.m. or at a different time in the middle of the night, depending on the preparation of the last escrow agreement at the closing), the parties agreed to extend the time when the buyer would assume the management of the Hotel. That is the agreement reflected in the letter from Stadium's counsel to Security's. And that is what happened.

Counsel for the Union wanted to prove that Security paid the wages of the employees that were incurred for shifts that commenced after the closing. However, Stadium's counsel represented that was not so; and the hearing was not closed pending the Union's call for an additional hearing to demonstrate that counsel's representation was inaccurate. The Union did not request an additional hearing, because it was unable to prove that Stadium paid any of the employees for those 13–16 hours. There is no evidence to suggest the contrary, or that Stadium ever exhibited any indicia of becoming the employer of those remaining employees. Richfield's comptroller clocked out the employees. Murphy's speech on February 26 merely announced that the Hotel had been sold and that arrangements had been made for interviews of applicants for employment with the buyer. Thus, he terminated no one. And, up to the time that he made that speech, he and Stadium had hired no one. There was no reason that they should have: the purchaser of a business is not obliged to hire the seller's employees. *Howard Johnson v. Detroit Joint Board*, 417 U.S. 249, 261 (1974), citing *NLRB v. Burns Se-*

⁶The letter also was not introduced in evidence.

curity Services, 406 U.S. 272, 280 fn. 5 (1972). There is thus a complete void of evidence that Security ever became the employer of anyone.

Even assuming that it did, that it employed these employees for 13–16 hours, it would still not be a successor. The determination of successorship is made when the successor has begun normal operations, *Fall River Dyeing Corp. v. NLRB*, 482 U.S. at 51, with a substantial and representative complement of employees. *Id.* at 48–49. The employment of Security's employees was meant to be merely temporary, pending the closing of the Hotel for reevaluation of its needs and hiring of personnel. The determination of whether Stadium was a successor would be appropriately delayed until it commenced its regular operation. *Galis Equipment Co.*, 194 NLRB 799 (1972). The record shows that, of 70 employees ultimately hired by Stadium, only 3 were formerly employed by Security. (Stadium offered employment to about nine more of Security's employees, but they rejected the offers.) Of the 15 employees initially hired by Stadium, no more than 3 could have been employed by Security. Thus, Stadium did not employ a majority of its predecessor's employees, and it could not constitute a successor.⁷ Because the Union picketed for more than 30 days and did not file a petition seeking an election, I conclude that the Union's picketing through July 3 violated Section 8(b)(7)(C) of the Act.

The Union did not picket on July 4, but it picketed on each day from July 5 through September 12. The Union claims that it did not picket on July 4 (1) to create a hiatus so that it could commence picketing to protest substandard wages and benefits being provided by Stadium and (2) to comply with an informal settlement of the unfair labor practice charges filed by Stadium in this proceeding. However, assuming that the Union engaged in legal substandard picketing,⁸ a conclusion that Coughlan's testimony does not support,⁹ the Union's picket signs did not uniformly commu-

nicate this object. Although most of the signs stated, "Holiday Inn—unfair—area wages and standards" and "Holiday Inn—unfair—area wages and benefits," some read, "This hotel—unfair," "Holiday Inn—unfair," "Ron Jaworski is an unfair employer," "Ron Jaworski unfair," "Jaworski sucks," and "Scab hotel—unfair," all of which signify the very same recognitional object as the picketing prior to July 4.¹⁰ *Newspaper & Mail Deliverers (Macromedia Publishing)*, 289 NLRB 537, 540 (1988). Indeed, one morning, about July 18, there were no signs present which mentioned substandard wages. Furthermore, Coughlan was present on the picket line at the Hotel for a portion of July 6 and, using a loudspeaker to communicate with Hotel patrons, stated: "This is a scab hotel, please do not cross the picket line"; "Picket lines have been up for four months, please honor the picket line, do not support this scab hotel"; and "All workers were fired in February, please honor the picket line." Thus, Coughlan viewed the dispute as a continuing one, one that started 4 months before when Stadium purchased the Hotel and did not retain the union represented employees. The recognitional object remained. *American Federation of Casino Employees (New Pioneer)*, 166 NLRB 544, 549 (1967). The Union was still attempting to obtain employment for its terminated members, a "bargaining" objective within the meaning of Section 8(b)(7). *Graphic Communications Local 1-M (Heinrich Envelope)*, 305 NLRB 603, 605 (1991).

In addition, the Union never retracted its demand for recognition. *Newspaper & Mail Deliverers (Macromedia Publishing)*, supra; *Plumbers Local 129 (Gross Plumbing)*, 244 NLRB 693 (1979). It also continued to pursue its arbitration proceeding and unfair labor practice charge, which had recognition as their object. *Carpenters District Council of Detroit (Shepard Marine Construction)*, 195 NLRB 530, 531 (1972).¹¹ Although Coughlan learned about Stadium's failure

⁷The Union does not contend in this proceeding, as it did before the AAA, that Stadium was a joint employer with Security or Richfield and the collective-bargaining agreement was binding on Stadium. It is not a joint employer because Stadium did not retain "for itself sufficient control of the terms and conditions of employment of the employees employed" by Security or Richfield. *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1123 (3d Cir. 1982); *Cabot Corp.*, 233 NLRB 1388 (1976), *enfd. sub nom. Chemical Workers Local 483 v. NLRB*, 561 F.2d 253 (D.C. Cir. 1977). The three companies do not "share or co-determine those matters governing the essential terms and conditions of employment." *NLRB v. Browning-Ferris Industries*, 691 F.2d at 1123; *emphasis in original*. Stadium had nothing at all to do with the labor relations relating to or conditions of employment of those employees who worked at the Hotel prior to 3 p.m. on February 26.

⁸The mere fact that the Union contends that its picketing is legal publicity picketing intended to advise the public about Stadium's substandard wages and benefits does not insulate the Union from attack. It has often been pointed out that labor organizations frequently use substandard conditions as a reason to conceal the true reason for the picketing, and the Board has not been averse to examining carefully the activities to ensure the reason is not pretextual. *Service Employees Local 87 (Liberty House/Rhodes)*, 223 NLRB 30, 34 (1976).

⁹The parties stipulated that the wages and benefits provided by Stadium to its employees since March 5 are lower than the wages and benefits provided to employees covered by the Union's collective-bargaining agreements in the Philadelphia metropolitan area. However, Coughlan testified that, for Stadium to comply with area wages and standards, it had to adopt the same terms of employment

as were contained in the Union's collective-bargaining agreement that was binding on Security. While Attorney Bernard Katz stated, in answering Stadium's request for a list of the area standards, that the Union was not "implying . . . that the labor cost and condition package must be in the precise form which we maintain," he added that "the Union is willing to evaluate any provision of wage, benefit, and applicable economic condition, which your client may intend to place into effect, in order to ascertain whether these would be the monetary standard equivalent of the Union's wage and benefit standard levels." Insistence on compliance with the specific terms of the agreement is the functional equivalent of bargaining and demonstrates a recognitional and not a proper area standards object. *NLRB v. Electrical Workers IBEW Local 265*, 604 F.2d 1091, 1097 (8th Cir. 1979); *Teamsters Local 456 (Construction City Corp.)*, 233 NLRB 418, 419–420 (1977); *Retail Clerks Local 899 (State Mart)*, 166 NLRB 818, 823–824 (1967), *enfd.* 404 F.2d 855 (9th Cir. 1968).

¹⁰The Union's use of nonarea standards signs occurred on about 25 occasions, diminishing over time.

¹¹The Union's attempt to distinguish this decision is unavailing. First, the Board found that, despite the union's claim that its picketing was solely aimed at the employer's substandard conditions, the union's filing of an unfair labor practice charge alleging that the employer refused to honor a current collective-bargaining agreement and the union's appeal from the dismissal of that charge indicated that the picketing was recognitional. Second, the Board is not bound by an Advice Memorandum, including the one relied on by the Union, *Carpenters Local 258 (Sabotka Co.)*, Case 3–CP–369 (Sept. 28, 1988). Third, that memorandum does not reverse *Shepard Marine*, supra, particularly because the union there had never previously

to meet area standards in early March, he failed to show any interest in protesting that failure until after the Board's Regional Office determined that the Union's unfair labor practice charge against Stadium had no merit and the Union's motion for reconsideration had been dismissed, thus showing that the change of direction was merely a pretext for the picketing that the Union wished to continue. *NLRB v. Building Trades Council of Delaware*, 578 F.2d 55, 59 (3d Cir. 1978). In addition, the Hotel was the only facility that Coughlan was interested in. His Union had not picketed any other hotel for substandard conditions for 12–15 months prior to the time when it began its area standards picketing of Stadium, indicating that this was, at best, an ancillary or secondary reason for the Union's protest. *Teamsters Local 115 (Nate Ben's Reliable)*, 224 NLRB 388, 390 (1976).

Finally, the change of direction of the Union from its original "unfair" signs to those emphasizing substandard conditions was merely one of convenience. On June 24, the Regional Director petitioned for an injunction under Section 10(l) of the Act against the Union in the United States District Court for the Eastern District of Pennsylvania (Civil Action No. 93-3357). Bernard Katz told him that he had to accept a hiatus or he could not picket at all. Over Coughlan's opposition—he did not want any pause in picketing and he wanted to continue to "have some type of force there"—he agreed to the hiatus. But Coughlan also wanted the employees to have at least the ability to "walk around with their heads held high and not down that they had lost everything," and Katz recommended that the Union establish a new line protesting substandard wages. As Coughlan explained, "So rather than continuing picketing, we ceased picketing, and then instituted a new line." This demonstrates that the Union's object had hardly changed. *Building Trades Council of Philadelphia (Altemose Construction)*, 222 NLRB 1276, 1280–1281 (1976), enf. d. mem. 547 F.2d 1158 (3d Cir. 1976).

The Union contends that the Board is estopped from seeking any remedy in this proceeding because the Union settled it. On July 6 the Regional Director forwarded a proposed informal settlement agreement to Stadium, but Stadium did not agree to it. Rather, it vehemently opposed the settlement. Section 101.7 of the Board's Statements of Procedure requires the Regional Director to approve the settlement, but he also did not sign the settlement agreement. Thus, there was no agreement, and there is no evidence that the Union was misled into believing that there was one. *Gladstone's 4 Fish*, 282 NLRB 1285, 1287 and fns. 6 and 7 (1987). In any event, even if the Union had legitimately thought that the agreement had been approved, it nonetheless breached the agreement by continuing to picket for recognition after it signed the agreement. Equity will not permit the Board to be estopped by a party which violates the very agreement it relies on. *Wallace Corp. v. NLRB*, 323 U.S. 248, 253–255 (1944).

engaged in picketing that would have been covered by Sec. 8(b)(7)(C), and its unfair labor practice charge was filed when its picketing was undeniably lawful.

A 10(l) injunction issued on September 7. Again, to create a hiatus and recommence picketing with a valid object, the Union did not picket at the Hotel from 1 p.m. on September 12 until 6 a.m. on September 14, when it resumed picketing, which has continued to the date of the hearing.¹² Since picketing resumed on September 14, the pickets have displayed signs stating, "Holiday Inn-Philadelphia Stadium is destroying our area wages and standards. Local 274 Hotel Employees and Restaurant Employees AFL-CIO." However, because the Union has continued to prosecute the arbitration proceeding, its object never changed. Furthermore, during the baseball playoffs in October, Coughlan telephoned the public relations director for Major League Baseball asking that he not have its representatives remain at the Hotel because the Hotel was "non-union." Coughlan was not interested in where either of the baseball teams stayed, and whether their hotels were represented by a union or whether they paid substandard wages and benefits. In connection with a rally to be held at the opening of the Series, Rauscher, then Council president, wrote: "[I]n way or another, there have been eight months of picketing. It is and has been a tough struggle." His letter attached a leaflet, approved by Coughlan and the Union's attorney, referring to the Hotel and its parking facility as "NOW A NON-UNION CONCERN."¹³ The leaflet makes no mention of any area standards dispute. Recognition was still what the Union was seeking, as one time evidenced by a bed sheet which pickets originally hung on Stadium's property¹⁴ and which bore the following: "They bought the bricks and the mortar, not the employees. That's why we're out here." Again, that shows the desire of the terminated employees to be rehired, a recognition and bargaining object.

The unfair labor practices found here, occurring in connection with Stadium's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Union has engaged in an unfair labor practice, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

¹² At the close of the hearing before me, the Regional Director's motion in Federal court to punish the Union for contempt was awaiting hearing.

¹³ The use of the term "non-union," in the circumstance of this proceeding, was directly aimed at Stadium's refusal to rehire the employees of Security and refusal to recognize the Union as their collective-bargaining representative. Its use was far from the "solely informational" use in *NLRB v. Teamsters Local 239*, 340 F.2d 1020, 1023 (2d Cir. 1965), relied on by the Union.

¹⁴ Stadium protested the location of the sheet, and it was subsequently moved from the Hotel property to the other side of the sidewalk, where it remained for 3 hours.

On these findings of fact and conclusions of law and on the entire record,¹⁵ I issue the following recommended¹⁶

ORDER

The Respondent, Local Union No. 274, Hotel Employees and Restaurant Employees International Union, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from picketing or causing to be picketed Stadium Hotel Partners, Inc., general partner, and 35 limited partners doing business as Stadium Hotel Partners, L.P. doing business as Holiday Inn-Philadelphia Stadium, where an object thereof is forcing or requiring the Employer to recognize or bargain with it as the representative of its employees or forcing or requiring its employees to accept or select it as their bargaining representative, in violation of Section 8(b)(7)(C) of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹⁵ The complaint alleges that Food Drivers, Helpers & Warehousemen Employees Philadelphia & Vicinity, and Camden and Vicinity, New Jersey-Local 500 a/w International Brotherhood of Teamsters, AFL-CIO and Gas Works Employees Union, Local 686, S.E.I.U., AFL-CIO also picketed the premises of Stadium as agents of the Union within the meaning of Secs. 2(13) and 8(b) of the Act. The record shows that they were present at rallies sponsored by the Council on May 19 and June 7 and 17. However, the General Counsel, while contending in his brief that the Union must "bear . . . responsibility for their misconduct," fails to allege that either local engaged in any misconduct that should be attributed to the Union, and no additional violations of the Act are added by including these allegations of agency. Nor do the allegations affect the remedy. If warranted, a cease-and-desist order is granted pro forma against the labor organization and its officers, agents, and representatives.

At the hearing, the General Counsel subpoenaed officers of both organizations to testify. That cost the Board money for subpoena and attendance fees. One witness appeared with counsel, and I assume that counsel was paid by his client. Witnesses' valuable time was lost, and time was wasted at the hearing, not only eliciting their testimony but also waiting for them to appear. And for what purpose? Absolutely none. I find the allegations mere surplusage, and I grant the Union's motion to strike these allegations.

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its business office and meeting halls, copies of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by Respondent, if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint in Case 4-CB-6960 be severed and continued under my jurisdiction, pending compliance with the terms of the settlement agreement signed by the parties on November 30, 1993.

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT picket or cause to be picketed Stadium Hotel Partners, Inc., general partner, and 35 limited partners doing business as Stadium Hotel Partners, L.P. doing business as Holiday Inn-Philadelphia Stadium, where an object thereof is forcing or requiring the Employer to recognize or bargain collectively with us as the representative of its employees or forcing or requiring its employees to accept or select us as their bargaining representative, in violation of Section 8(b)(7)(C) of the National Labor Relations Act.

LOCAL UNION NO. 274, HOTEL EMPLOYEES
AND RESTAURANT EMPLOYEES INTER-
NATIONAL UNION, AFL-CIO